IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 306.

THE STATE OF MISSOURI EX REL. THE LACLEDE GAS-LIGHT COMPANY, PLAINTIFF IN ERROR,

vs.

MICHAEL J. MURPHY, STREET COMMISSIONER, ETC., DEFENDANT IN ERROR.

MOTION TO ADVANCE, BY DEFENDANT IN ERROR.

Now comes said defendant in error and respectfully moves this honorable Court to advance the above-entitled cause for hearing at as early a day as the convenience of the Court will permit, and for grounds and reasons for this application defendant in error respectfully shows unto the Court as follows:

1. This is a proceeding by mandamus to compel the street commissioner of the city of St. Louis to grant relator a per-

mit to construct a conduit for the carrying of its electric wires under the streets of the city, the claim being asserted by relator that under its charter, granted by the State of Missouri, it has an absolute right to place its pipes, wires, and fixtures under any street or public place in the city, subject only to the limitations that it shall be done with as little inconvenience to the public as possible, and that it shall be done as expeditiously as possible. The city claims, under its charter and under its general police powers, that it has the right to regulate the use of its streets; that no person or company has a right to tear up its streets without its permission or, at least, without notice to it, and that relator has neither applied for nor obtained such permission nor given such notice.

2. Prior to the beginning of this litigation and ever since the city has been endeavoring to cause all electric wires to be placed under ground. The streets are very narrow in the business part of the city, generally only sixty feet wide, which, with a twelve-foot sidewalk on each side, leaves only thirty-six feet of roadway, and of this the street-car tracks take up sixteen feet. This leaves only twenty feet for other purposes—that is, ten feet on each side of the street. The city has endeavored to reserve one side of the street for public sewers, water pipes, and like purely public uses. The other side of the street it is willing shall be used by telegraph, telephone, electric-light, heat, and power companies, and such like quasi-public uses.

3. Last July the city adopted a general ordinance allowing and requiring all electric wires to be put under ground

in the business part of the city, and requiring all companies to file applications, with plans and specifications showing the space desired.

Eighteen companies have applied for such space.

This would require more than the ten feet on one side of the street if each was given a separate conduit, so that it is necessary to group them, regard being had to the character of the currents used, whether high tension or low tension.

This does not include the relator's claims.

If the city should proceed now to allot space to the eighteen companies that have applied therefor, and if this honorable Court should afterwards hold that relator is entitled to conduits, there would be no space under the street for it, except on the side of the street reserved for public uses, like sewers and water pipes.

This would most seriously hamper and injure the public uses of the streets.

Whereas if the city could know now that it would have to grant relator space, it could so arrange the conduits on the quasi-public side of the street and so group the other eighteen applicants as to leave space enough for relator and not interfere with the side of the street reserved for public uses.

4. There are now upon the streets in the business center of the city as many as four hundred, and in a few cases as many as six hundred, wires on a street.

This has made them exceedingly dangerous to life and property. Some of them carry currents that will cause and have caused instant death to pedestrians, when the wires break and fall onto the street, and the multiplicity of wires

makes it impossible to raise fire-ladders or water-towers with which to fight fires, and with the modern practice of constructing buildings ten, twelve, and sixteen stories high, these wires present a constant menace to all property in such district.

5. The work of constructing conduits can only be carried on during moderate weather. In our cold climate such work cannot be done in the winter. The eighteen applicants aforesaid are ready to begin work this spring. Our city engineers cannot assign them space until they know what provision, if any, is to be made for relator.

For these reasons, if this case is not heard until next October, it will delay all action by the city looking to the burying of these dangerous wires for another year.

Defendant in error therefore earnestly prays the Court to give this case an early setting, with the hope that it may be disposed of before the season for building conduits expires this year.

Respectfully submitted.

W. C. MARSHALL,
Counsel for Defendant in Error.